

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

JAMES N. McKELVEY,

Plaintiff,

Case No. 07-14538

v.

Hon. John Corbett O'Meara

PETE GEREN, Secretary
of the Army,

Defendant.

/

**ORDER DENYING RECONSIDERATION AS TO ATTORNEY'S
FEES AND GRANTING RECONSIDERATION AS TO COSTS**

Before the court are two motions for reconsideration filed by Plaintiff: a motion for reconsideration regarding the award of attorney's fees and a motion for reconsideration regarding the award of costs. With leave of court, Defendant filed a response to the motion regarding attorney's fees.

The standard for granting a motion for reconsideration is as follows:

Generally, and without restricting the court's discretion, the court will not grant motions for rehearing or reconsideration which merely present the same issues ruled upon by the court, either expressly or by reasonable implication. The movant shall not only demonstrate a palpable defect by which the court and the parties have been misled but also show that correcting the defect will result in a different disposition of the case.

LR 7.1(h)(3). A motion for reconsideration "is not properly used as a vehicle to re-

hash old arguments or to advance positions that could have been argued earlier but were not.” Smith v. Mount Pleasant Schools, 298 F. Supp.2d 636, 637 (E.D. Mich. 2003) (citing Sault Ste. Marie Tribe of Chippewa Indians v. Engler, 146 F.3d 357, 374 (6th Cir. 1998)).

With respect to the award of attorney’s fees, the court finds that Plaintiff has failed to demonstrate a palpable defect by which the court and parties were misled. With respect to the award of costs, however, reconsideration is appropriate. The court declined to tax expert witness fees, as those fees are generally not taxable. Here, however, the Rehabilitation Act expressly permits the award of expert witness fees to the prevailing party. See 29 U.S.C. § 794a(a)(1) and 42 U.S.C. § 2000e-5(k). Accordingly, the court will award Plaintiff costs – in addition to the amount already awarded – in the amount of \$32,233.34 for expert witness fees.

IT IS HEREBY ORDERED that Plaintiff’s March 12, 2013 motion for reconsideration is DENIED.

IT IS FURTHER ORDERED that Plaintiff’s July 10, 2013 motion for reconsideration is GRANTED.

s/John Corbett O’Meara
United States District Judge

Date: October 10, 2013

I hereby certify that a copy of the foregoing document was served upon counsel of record on this date, October 10, 2013, using the ECF system.

s/William Barkholz
Case Manager